

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF CITY OF PASADENA, CALIFORNIA

These Comments are filed by the City of Pasadena, California in support of the comments filed by the National Association of Telecommunications Officers and Advisors (NATOA) and the National League of Cities (NLC). Like NATOA and the NLC, Pasadena, California believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers.

As our experience demonstrates, our local franchising process allows for the business needs of competitive providers to be addressed at the same time that the needs of the local community are met. Our residents expect us to manage the local rights-of-way, ensure that the appropriate fees for use of public infrastructure are collected, monitor the service provided by local operators, and continue support for PEG access and other public services. These are all uniquely local activities and concerns that should continue to be addressed at the local level.

In support of these beliefs, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Pasadena, California is a city with a population of approximately 145,000. Our franchised cable TV provider is Charter Communications. Our city has also negotiated an Open Video System franchise agreement with a competitive provider, Altrio Communications. Our community has negotiated cable franchises since 1983.

Our Current Franchises

Our current cable TV franchise began on October 18, 2000. The agreement expired on October 17, 2005, and has been extended on a month-to-month basis under mutual agreement with Charter Communications while we negotiate a franchise renewal. Pasadena's franchise with Altrio Communications began on October 11, 2001. While the franchise runs through October 2011, Altrio is no longer providing service in our community. Champion Broadband acquired Altrio's assets in March 2004 and is currently providing competitive video service. As described further below, the City and Champion Broadband have not completed negotiations on an open video system agreement. Altrio franchise agreement information is provided here as a reference point of comparison with the City's incumbent cable TV franchise.

Franchise Fees

Our cable TV and open video system franchises require the cable and open video system operators to pay a franchise fee to the City in the amount of five percent of the operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

PEG Access Support

We require the cable and open video system operators to provide the following public, educational, and/or governmental (PEG) access channels on their systems: one channel devoted to public access; two channels devoted to educational access; and one channel devoted to government access. In addition, the franchisees hold two additional channels in reserve for future access requirements. Our cable TV franchise includes the following PEG support requirements:

- Upfront grants of \$453,500 for upgrade to a shared PEG access mobile production van, portable cameras, control room and editing equipment, playback equipment, and cameras for live broadcast of City Council and other public meetings.
- Provision of equipment at Charter's local production studio to support access activities.
- Allocation of up to 200 30-second commercial programming spots to publicize community events and services and promote local PEG access channels.
- Provision of broadband training to City staff or designated individuals.
- Live cablecast connections at 20 community locations.

- Expanded basic video services to 99 city and public buildings.
- \$50,000 for rental of portable microwave facilities, facilitating live cablecasts from sites not equipped with permanent live origination connections.

The franchisee also offered to maintain a fully operational production facility available for local access production at its Pasadena studio. Provisions related to maintenance and availability of the local Charter studio are documented in the cable TV franchise agreement.

Our open video system franchise with Altrio Communications requires that our PEG channels be supported in the following ways by the open video system operator:

- Upfront grant of \$100,000 for PEG access and community connectivity support.
- Ongoing PEG contributions of \$0.64 per subscriber per month until a cumulative sum of \$783,500 is paid to the City. If full payment is not made by the tenth year of the franchise, Altrio will pay the difference between \$783,500 and the amount that was already remitted to the City.
- Provision of broadband training to City staff or designated individuals.
- Allocation of up to 200 30-second commercial programming spots to publicize community events and services and promoting local PEG access channels.
- Live cablecast connections at 23 community locations.
- Expanded basic video service to 90 city and public buildings.

I-Net

Our cable TV franchise requires that Charter Communications continue operation and support for an existing coaxial Institutional Network (I-Net), with new connections provided for two school district facilities. In addition, Charter is to provide technical consulting services to support use of the I-Net. The I-Net in Pasadena carries access programming between facilities, and is critical to distribution of content created in the local access studios and at educational sites. In addition, Charter is required to provide a virtual private network (VPN) via cable modem and related Internet filtering software to up to eight public schools as an alternative to additional expansion of the I-Net.

Our agreement with Altrio Communications does not include any I-Net obligations, as these cannot be required of open video system operators.

Emergency Alert

Our cable TV and open video system franchises both require that the operators provide emergency alert capabilities. The cable TV and open video system operators are required, when technically feasible and authorized by law, to provide the City with emergency override capabilities. This allows the City's public safety personnel and City officials the ability to cablecast emergency messages by interrupting and overriding the audio signals of all cable channels. Both operators are required to provide the equipment necessary for this emergency override.

Customer Protection & Service Standards

Pasadena's Telecommunications Ordinance, incorporated in both our cable TV and open video system franchises, contains a variety of customer protection and service obligations, by which we are able to help ensure that the video providers are treating our residents in accordance with federal standards and the terms agreed to in their franchises. These obligations include:

- Standards for customer service operators and toll-free telephone line capacity.
- A local business office open on weekdays and evenings or weekends with adequately trained staff.
- Installation and service call standards, including standards for emergency responsiveness and response timeframes.
- Consumer privacy protections.
- Billing and information standards, ensuring customers are provided clear, up-to-date information about services and charges.
- Standards for credits to customers for service outages and missed appointments.
- Procedures for handling customer complaints and disputes.
- Procedures related to disconnection and downgrade of subscriber services.
- Parental control options.
- Nondiscrimination in serving Pasadena customers.

Build-Out Requirements

Our original cable TV franchise required that the cable operator build the system serving Pasadena within 18 months. However, during the course of system construction, the original cable TV operator and the City of Pasadena negotiated a series of extensions to the build-out schedule. Ultimately, the cable TV operator

was granted approximately nine years to complete construction of its system in Pasadena.

Our open video system franchise with Altrio Communications requires that the operator complete construction of a system serving all of Pasadena within ten years. Additionally, the franchise offers an incentive to complete system construction within five years, extending the franchise term by five years (for a total of 15 years) if this condition is met.

Citywide Service Requirements

Both our cable TV and open video system franchises require that the operators provide service to all residential areas of our community where:

- There are at least 40 residential dwelling units per square mile.
- The connection requires no more than a standard 150-foot aerial drop line from a main feeder line.
- Terms and conditions of service to multiple dwelling units are mutually acceptable to the operator and the owner or manager of the building.

The operators must give potential customers in areas that don't meet the density or proximity guidelines above the option of paying the cost of system extension and service installation.

System Rebuild Requirements

Charter Communications upgraded its cable TV system in Pasadena to a 750 MHz capacity in 1997. The company provides a variety of advanced services over the network, including digital video services, cable modem service, video-on-demand, and pay-per-view. Altrio Communications has installed an advanced hybrid fiber-coax system in approximately 35 percent of Pasadena. The open video system operator offered services very similar to those of the cable TV incumbent, including digital video service, cable modem service, video-on-demand, pay-per-view, and digital audio channels.

To ensure that our residents have access to current telecommunications technologies, our cable TV and open video system franchise agreements contain several requirements:

- If the City finds, through a system performance review, that there remains 50 MHz or less of available bandwidth or that more than five percent of the system nodes are experiencing traffic congestion, and that additional or more advanced services cannot be provided using the limited available bandwidth, the City and the operator will meet to discuss remedies, including

reconfiguration or upgrade of the system to relieve the congestion. Any reconfiguration or upgrade must be completed within two years.

- Any upgrade or rebuild of the regional system that includes Pasadena will be commenced first in Pasadena.
- When new or more advanced services are made available to the regional cluster that includes Pasadena, the operator will make those services available to Pasadena customers within 120 days of offering the services to other communities in the regional cluster.
- Representatives of the video provider and the City will meet to discuss the extent to which technology and services provided in Pasadena compare to those of established, state-of-the-art systems serving other communities in the greater Los Angeles area, with the understanding that the operator will provide a level of overall video service in Pasadena that is equivalent to that provided by video operators in the comparison cities.

Insurance and Security Requirements

The City's cable TV franchise contains the following insurance and bonding requirements:

- Workers' Compensation and Employer's Liability Insurance, as required by the State of California.
- General liability and auto liability insurance, both in the minimum amount of \$2,000,000.
- Security for non-construction obligations in the form of a \$50,000 letter of credit.
- Should the cable operator undertake an upgrade or rebuild of its system in Pasadena, a performance bond for no more than 75 percent of the bid price received from the operator's prime contractor for the construction work.

Pasadena's open video system franchise includes insurance and bonding requirements as follows:

- Workers' Compensation and Employer's Liability Insurance.
- General liability and auto liability insurance, both in the minimum amount of \$2,000,000.
- Security in the amount of \$150,000 for construction-related obligations.
- Initial security in the amount of \$10,000 for other franchise obligations. This amount is to increase over time by \$5 per subscriber as the system's geographic footprint and customer base grows, to a maximum of \$50,000.

Permits

The cable TV and open video system franchises grant the operators access to the public rights-of-way and compatible easements for the purpose of providing video service. Apart from the franchise, the cable and open video system providers are required to obtain a permit from the City's Public Works Department as well before they may access the public rights-of-way. Permits are required for system construction, upgrade, and maintenance activities that involve placement of facilities in the public right-of-way, cutting of a public street, and lane closures. Permit fees are based on the City's actual cost to review plans and inspect the work being performed.

Franchise Enforcement Mechanisms

The franchise agreements provide for the following enforcement mechanisms by which we are able to ensure that the video system operator is abiding by its agreement:

- Provisions for technical audits of the cable TV and open video systems to ensure that the systems comply with technical standards and other franchise specifications.
- Requirements that the operators perform periodic performance testing of their systems in accordance with FCC rules and regulations.
- City rights to inspect and audit documents, including those relating to franchise fee payments, system operations, and subscriber complaints.
- Authority to impose fines and penalties for default associated with the operator's failure to comply with design and construction requirements, periodic performance testing, maintenance and provision of records, and customer protection and service standards.
- Clear procedures related to notice of default, opportunities to cure, administrative hearings, and revocation of the franchise.

PEG Access Services

Pasadena values the public, educational, and government access services provided by local access organizations via the cable TV and open video systems. The Pasadena Community Access Corporation (PCAC) has provided access services in our community for 20 years. PCAC's public and governmental access programming and activities are supported almost entirely through franchise fees and operator grants. Educational access services are provided by the Pasadena Unified School District and Pasadena City College. Collectively, Pasadena's access organizations operate four access channels. Last year, PCAC and the School

District provided approximately 2,500 hours of new original local programming to video subscribers. The community and students used access equipment and facilities for approximately 2,700 hours in 2005. Below are the highlights of access services available to the Pasadena community.

- Video bulletin board with text and graphics for community announcements.
- Coverage of community planning forums, town hall meetings, and neighborhood board meetings.
- Community-produced television programming for special interests such as seniors, non-English-speakers, ethnic and cultural groups, youth, people with disabilities, and advocacy groups.
- Staff-produced television programming on topics of interest to the local community.
- Dedicated channel capacity specifically for non-profit organizations to air locally-produced programming.
- Dedicated channel capacity specifically for religious organizations to air locally-produced programming.
- Hotline studios for live, interactive programs that allow local experts to answer viewer questions.
- Free viewing of video service at selected public sites.
- Local news coverage not available on local broadcast stations.
- Media literacy and production training for neighborhood-based community organizations and individuals.
- Video production courses.
- Video production facilities including studio, field, editing, and remote van.
- Support to media training centers in local schools, enhancing learning opportunities for students.
- Satellite program reception and redistribution by the Pasadena Unified School District.

- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Distance learning programming delivered to public and private institutions, facilitating distribution of for-credit instruction offered through the Pasadena City College.
- Gavel-to-gavel coverage of educational governance proceedings by the Pasadena Unified School District.
- Homework hotline programming delivered to students' homes via video.
- Distribution of community college and university educational programming.
- Internet access for members of the public at the Pasadena Community Access Corporation's facility.
- Unique non-local programming, such as NASA-TV, available via satellite feed.
- Gavel-to-gavel coverage of state legislative sessions, hearings, and other select proceedings on issues of community interest, such as recent state legislature liquor store nuisance hearings.
- Gavel-to-gavel coverage of local government meetings, hearings and other select local governmental proceedings.
- Election night coverage.
- Local services provided at satellite city facilities via I-Net and cable modem.

The Franchising Process

Under the law, a cable (or open video system) franchise functions as a contract between the local government, operating as the local franchising authority, and the cable (or open video system) operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, the Pasadena City Charter requires that the City adopt a resolution regarding its intent to franchise, which is published and serves as notice of the public hearing required prior to the grant of any franchise. The Charter further requires that franchises be granted by ordinance, which must be read twice prior to adoption.

In Pasadena, the framework for regulation of cable TV, open video system, and other video and telecommunications service providers is provided in Title 18 of the Municipal Code. Pasadena updated Title 18 of the Municipal Code in May 2000 to recognize changes in telecommunications regulation and customer service standards since the original ordinance was adopted. Among the changes were updates to procedures to facilitate processing of competitive franchise applications from both cable TV and open video system overbuilders.

Competitive Video Systems

Our community has received three formal applications for competitive franchises. WinFirst applied for a cable TV franchise in September 2000, but the company chose not to enter into any formal discussions with the City. Shortly thereafter in December 2000, Altrio Communications submitted an open video system franchise application to the City.

Following receipt of Altrio's open video system franchise application, the City requested additional information from Altrio regarding its planned system construction and financial capabilities. Altrio provided the information in February 2001. The City proceeded to develop a draft open video system franchise agreement based in large part on the existing cable TV franchise with Charter Communications. In crafting a competitive franchise agreement, the City tried to balance carefully the level playing field concerns raised by the incumbent cable TV operator on the one hand and barrier to entry concerns voiced by the open video system applicant on the other. Negotiations between the City and Altrio to finalize the agreement were conducted between April and August, 2001. The negotiations focused on: impacts on the public rights-of-way from Altrio's planned construction, including placement of above ground facilities; security to ensure Altrio's compliance with its franchise obligations; and structuring of PEG obligations to create parity with the incumbent provider, but that were realistic requirements for a small start-up with few subscribers.

The City conducted a widely noticed public hearing in February 2001, seeking input on video franchise related community needs from all interested parties. In addition to the public hearing, the City sought to identify community

needs through outreach to local PEG access organizations, City departments, and neighborhood associations. The City conducted a second public hearing in September 2001 prior to adoption of the Altrio open video system franchise, in accordance with California State Government Code Section 53066 (the State level playing field statute). As required by the City Charter, the Altrio open video franchise was granted via adoption of a City ordinance, read twice by the City Council in September 2001. The Altrio Communications open video system franchise agreement became effective in October 2001 following published notice of the franchise grant and Altrio's documentation of the required security bond and insurance coverages.

Following the City's grant of an open video system franchise to Altrio Communications, Charter Communications notified the City that it was commercially impracticable for the company to continue meeting the terms of its franchise. Charter also alleged that the City had violated California State Government Code Section 53066 and threatened to sue Pasadena if the City did not modify Charter's franchise obligations. City and Charter representatives met for over two years, exploring the differences between Charter and Altrio's franchise obligations, as valued by both entities' experts. The discussions also focused on modifications that the parties might consider to the Charter franchise agreement to address some of the cable TV operator's concerns. The City and Charter never reached agreement on whether or not Charter's franchise obligations were more burdensome than Altrio's (with Charter arguing that a level playing field required identical obligations, and the City taking the position that the overall obligations had to be level on a per subscriber basis over the term of the franchise). Discussions between the City and Charter culminated in a draft franchise modification agreement, but the parties have not executed it.

Concurrent with these discussions between the City and Charter Communications, Altrio Communications constructed an open video system covering approximately 35 percent of Pasadena. The company ran out of funds in late 2003, and stopped meeting its franchise obligations (including payment of franchise fees, PEG fees, and participation in undergrounding projects) in October of that year. Altrio's assets were sold to Champion Broadband, another small video system operator, in March 2004.

While Champion acquired Altrio's assets, it did not take on the original open video system operator's obligations. Altrio owed the City franchise fees, utility user taxes, PEG access fees, and electric usage charges in excess of \$126,000. In addition, Altrio failed to compensate the City for its attachments to City-owned utility poles, which represents pole rental revenues of approximately \$235,000. Finally, the City contracted for construction of underground conduit in a local underground district on Altrio's behalf. Altrio's share of the undergrounding project costs, in excess of \$500,000, remains unpaid. The City recovered a fraction of

Altrio's outstanding obligations via the company's cash security and performance bond.

Champion Broadband submitted Form 394 transfer applications to the City in June 2004 and October 2004. Both applications were deemed flawed by the City, primarily given Altrio Communications' absence from the process and failure to sign the documents as Transferor. In June 2005, Champion submitted a complete open video system franchise application to the City. Throughout its discussions with the City, Champion has indicated that it would not be able to meet the obligations of the Altrio franchise agreement, including the build-out requirement and PEG access support obligations. The City and Champion have been in negotiations regarding an open video system franchise agreement since receipt of Champion's application. Charter Communications has indicated it similarly will challenge any franchise the City grants to Champion Broadband if Charter determines that the competitor's franchise obligations are not identical to its own. Champion Broadband has provided service in Pasadena since its acquisition of the Altrio system assets in March 2004 without a formal franchise agreement.

Pasadena also has recently been approached by AT&T for approval of an upgrade to its local infrastructure to facilitate higher-speed data and video services. In very general terms, the company has indicated its willingness to pay franchise fees, carry PEG channels on its video system, and provide emergency alert capabilities. These offers are important to the City, but match a small subset of the incumbent cable TV obligations and right-of-way and customer service protections addressed in our franchise agreements and described above. To date, the City and AT&T have not had any formal franchise or other negotiations.

Conclusions

Pasadena has been supportive of new entrants to the video marketplace, having negotiated a competitive franchise with one provider and allowing its successor to continue offering competitive services during negotiation of a franchise agreement. As the above information indicates, we are experienced at working with video providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account. We have faced challenges, however, in crafting competitive franchises that address new providers' barrier to entry concerns, but that also meet the requirements of California's somewhat nebulous level playing field statute. The City also has incurred significant expenses in the process, defending the competitive franchise and losing money when the competitive provider went out of business.

Pasadena strongly believes it is critical that video franchising remain at the local level for several reasons. Local franchising ensures that local operators are

allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to oversee appropriately the operations of video service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local video systems will be implemented (such as build-out scope and timeframe, and placement of above-ground facilities in the public rights-of-way) and what features (such as PEG access, I-Nets, and broadband training) will be available to meet local needs. These factors are equally present for new entrants as for existing users. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs.

The City of Pasadena, California therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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